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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,445

06/20/2005

Yoshinori Komatsu

Q88710

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/16/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/539,445	<b>Applicant(s)</b> KOMATSU ET AL.	
	<b>Examiner</b> Brent T. O'Hern	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claims*

1. Claims 1-8 are pending with claim 8 new.

## WITHDRAWN REJECTIONS

2. All rejections of record in the Office Action mailed 15 May 2008, page 2, paragraph 1 have been withdrawn due to Applicant's arguments in the Paper filed 13 August 2008.

## NEW REJECTIONS

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the **written description** requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase "discharger" in claim 1, line 4 and claim 4, line 3 is **new matter** as the original disclosure does not disclose such.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castenmiller (US 4,874,626) in view of Clapp et al. (US 5,156,876) and Sejab et al. (US 3,849,580).

Castenmiller ('626) teaches a foamable composition such as a spread comprising a water-in-oil type emulsion or butter comprising an emulsifier that is a glycerin fatty acid ester or an enzyme-processed lecithin used for preparing the water-in-oil type emulsion wherein the water-in-oil type emulsion comprises an edible oil, an emulsifier and a gas propellant usable as a spread (*See col. 3, ll. 27-52, col. 5, ll. 5-43, col. 6, l. 56 to col. 7, l. 15. The product is interpreted as being a foamable composition such as a spread, not a package, not a container and not a method of how it is made or used or how it is placed into or taken out of the container or how it may be foamed or jetted. The soybean plant is known to use biological enzymes in the synthesis of lecithin.*), however, fails to expressly disclose a propellant dissolved in the emulsion.

However, Clapp ('876) teaches dissolving propellants into foamable spreadable fat/oil type compositions containing water in some formulations in aerosol containers having a discharging nozzles wherein foam can be generated at the time of jetting (*See Abstract, col. 5, ll. 14-31 and col. 5, l. 61 to col. 7, l. 24.*) for the purpose of providing a stable food material that can be added to other foods without introducing undesirable flavors and colors (*See col. 3, ll. 20-33.*).

Sejab ('580) teaches dissolving propellants into foamable spreadable butter, margarine -type compositions that are placed in aerosol containers having a discharging

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nozzles wherein foam can be generated at the time of jetting (*See col. 1, l. 23 to col. 2, l. 18 and col. 3, ll. 12-35.*) for the purpose of providing a stable, spreadable food material that does not need to be refrigerated (*See col. 1, ll. 13-51.*).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to dissolve a propellant into Castenmiller's ('626) composition and place it in an aerosol dispenser as taught by Clap ('876) and Sejam ('580) in order to provide a stable food that in some instances does not need to be refrigerated.

#### **ANSWERS TO APPLICANT'S ARGUMENTS**

5. In response to Applicant's arguments (*p. 5, para. 5 to p. 7, para. 2 of Applicant's Paper filed 13 August 2008*) that mixtures of water-in-oil emulsions, per the amended claims, that are discharged from containers is not known, it is noted that spreads such as water-in oil emulsions are known as discussed above by Castenmiller ('626) and Clapp ('876). Dispensers for such foods are known as discussed above by Clapp ('876) and Sejam ('580).

6. In response to Applicant's arguments (*p. 6, para. 3 to p. 7, para. 2 of Applicant's Paper filed 13 August 2008*) regarding the crystallization step, it is noted that said arguments are not clear. A crystallizer is a known piece of equipment in the manufacture of shortening/margarine/spreads etc. where the fat/hydrogenated oil is fed as a liquid at an elevated temperature and processed with the aid of gas into a soft creamy solid product with the desired density and crystallinity. But for this step the product such as a spread would either have the consistency of a bar of soap or a

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combination of liquid oil and hard fat. This process step clearly improves the performance of the spread and is commonly used in the industry.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BTO/

Brent T O'Hern

Examiner, Art Unit 1794

October 12, 2008

/Elizabeth M. Cole/

Primary Examiner, Art Unit 1794